IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 22202 of 2004

Between:

S. Satyanarayana Reddy S/o Venkatappa Reddy
Retired MDO., O/o K. Narayana Reddy Poultry Farm, Yenkirial, Dist: Nalgonda

..... PETITIONER

AND

1 The State of A.P., rep by Secretary, P.R. & R.D Department, Secretariat, Hyderabad
2 The Commissioner of Panchayat Raj & Rural Development, Himayatnagar, Hyderabad
3 The District Development Officer (Enquiry Officer) Zilla Parishad, East Godavari at kakinada, East Godavari

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ or order or direction more particularly in the nature of Writ of Mandmaus by calling for records relating to the proceedings No. 2121/I1/CRP&RD/93, dated 03-04-1993 of the 2nd respondent and the consequential charge Memo issued by the 3r Respondent in Roc. No. D1/8409/92 dated 02-07-1993 and set a side the same by holding as arbitrary, illegal and violtive of A.P. Civil Service (CCA) Rules 1991.

Counsel for the Petitioner: MR.P.SURESH REDDY

Counsel for the Respondent: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court made the following :

ORAL ORDER (per Hon'ble Sri Justice G.Bikshapathy)

1. This writ petition is filed assailing the order passed by the A.P. Administrative Tribunal, Hyderabad in O.A.No.5113 of 1999, dated 1.7.2004.

2. The petitioner filed the O.A. before the Tribunal assailing the validity of the order passed by the Government in G.O.Rt.No.1108 Panchayat Raj & Rural development (Estt. VII) Department, dated 23.6.1999. The petitioner was working as Mandal Development Officer at Rampachodavaram, East Godavari District. While he was in service, certain charges were framed against him. A Charge Memo, dated 2.7.1993 was issued by the District Development Officer, Kakinada. However, the petitioner retired from service on 30.9.1993 on attaining the age of superannuation, but thereafter, an enquiry was conducted in respect of the charges framed against him and the enquiry officer found the petitioner guilty of the charges. Accordingly, the Government, by virtue of the powers vested in it under Rule-9 of the A.P. Revised Pension Rules, 1980, passed the impugned order, dated 23.6.1999 imposing 100% cut in pension and also withholding of D.C.R.G in full. The said order came to be challenged by the petitioner in O.A.5113 of 1999 before the Tribunal. The learned Tribunal, however held that the order passed by the Government is

not sustainable and directed the authorities to conduct a fresh enquiry after giving due opportunity to the petitioner. Against the said order, this writ petition has been filed.

3. The learned counsel for the petitioner, however, submits that the very issuance of the charge memo itself is without jurisdiction as it was not issued by the disciplinary authority, but it was issued by the Enquiry Officer which is contrary to the provisions contained in Rule-20 of the A.P. Civil Services (Classification, Control and Appeal) Rules, 1991 and therefore, the Tribunal ought to have set aside the entire enquiry proceedings leaving it open for the authorities to undertake the exercise of *de novo* enquiry. The learned counsel would also submit that the Government has not applied its mind to the facts of the case. Inasmuch as there was no loss to the Government and also there was no charge relating to misappropriation or fraud in connection with the funds of the Government, in such a situation, depriving the petitioner of his entire pension and D.C.R.G in full is highly illegal and unconscionable. Therefore, the learned counsel would submit that the order of the Tribunal is liable to be set aside and the impugned order requires interference by this Court under Article 226 of the Constitution of India.

4. The learned Government Pleader, however, submits that as many as 15 charges were framed against the petitioner and they were enquired into and after he retired from service, the enquiry officer held that the charges were proved. Though the learned Tribunal set aside the order of punishment passed by the Government, yet the petitioner will be given proper opportunity and the enquiry will be conducted against the petitioner in accordance with the procedure, and therefore, no prejudice can be said to be caused to the petitioner by complying with the orders of the Tribunal.

5. We have heard the learned counsel for the parties at length.

6. We find that the charge memo was issued by the enquiry officer two months prior to the date of the petitioner's retirement and the

learned counsel for the petitioner has contended that the issuance of charge memo by the enquiry officer itself is without jurisdiction as the rule does not contemplate such procedure. According to the learned counsel, it is the prerogative of the disciplinary authority to frame the charges and thereafter obtain the explanation. If he is not satisfied with the explanation, he is empowered to pass appropriate minor punishment and if any major punishment is sought to be inflicted on the delinquent, an enquiry could be conducted by itself or it can be entrusted to the enquiry officer. Therefore, the enquiry officer will figure only after the charges were framed and the explanation was submitted to the charges and a decision was taken by the Government to conduct enquiry. Under those circumstances, the learned counsel would submit that the very initiation of the enquiry against the petitioner itself is illegal.

7. We are not impressed with the argument of the learned counsel for the petitioner. Even if the entire matter is concluded, still it does not preclude the department from commencing fresh enquiry by the disciplinary authority by issuing show cause notice and charges to the delinquent official. Inasmuch as the disciplinary authority was a party to the proceedings at whose instance the matter was sent to the Government, it would only be a futile exercise to make the enquiry for the second time in respect of the charges already enquired into.

8. Under those circumstances, we find that quietus should be given to the matter by the Government instead of conducting the enquiry and re-exercising the powers of the disciplinary authority. But however, we find from the order of the Government that the matter was not considered in proper perspective as regards imposition of punishment.

9. Under the Rules, it is open for the Government to impose appropriate punishment. Rule-9 of the Pension Code reads thus:

> *"**Right of Government to withhold or withdraw pension:-** The State Government reserves themselves the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or*

for a specified period and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused, to the Government and to the local authority if, in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon reemployment after retirement.

Provided……."

As we see from the charges, no charges are framed against the petitioner relating to misappropriation or fraud in connection with the funds of the Government. It is only that he effected certain purchases which were not required but that cannot be construed as misappropriation or loss to the Government. It could only be a procedural irregularity. In respect of other charges also, we find that the petitioner diverted the funds from one head to another head. Even this charge also cannot be grouped in the category of misappropriation or fraudulent acts. Under those circumstances, we find that the charges relate to only procedural irregularities for which we find that denying 100% pension and also D.C.R.G. is highly arbitrary.

10. It is to be noted that the petitioner has to survive for the balance period of his life and if he is deprived of D.C.R.G. and pension, it would be depriving his livelihood violating Article 21 of the Constitution of India. Under those circumstances, we find that the matter requires reconsideration in the hands of the Government keeping in view the observations made above.

11. Therefore, the impugned order is set aside and the matter is remitted back to the Government for fresh consideration. The Government shall consider the matter and pass appropriate orders within a period of two months from the date of this order. The order of the Tribunal is accordingly modified.

12. The writ petition is accordingly disposed of. No costs.

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(G. BIKSHAPATHY, J.)

7th December, 2004.

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(P.S. NARAYANA, J.)

bcj

To

1. The Secretary, The State of A.P.,P.R. & R.D Department, Secretariat, Hyderabad

2. The Commissioner of Panchayat Raj & Rural Development, Himayatnagar, Hyderabad

3 The District Development Officer (Enquiry Officer) Zilla Parishad, East Godavari at kakinada, East Godavari

4. Two C.Cs. to the Government Pleader for Panchayat Rat & Rural Development, High Court Buildings, Hyderabad (OUT)

5 Two C.D. copies